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July 28, 1995

BY HAND

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

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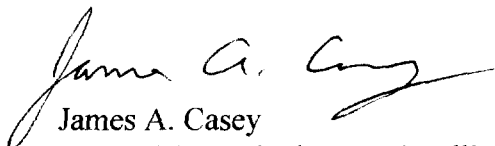
Re: CS Docket No. 95-61  
Annual Assessment of the Status of Competition  
in the Market for the Delivery of Video Programming

Dear Mr. Caton:

Enclosed herewith, on behalf of United States Satellite Broadcasting Company, Inc. ("USSB") are an original and four copies of its "Reply Comments" in the above-referenced proceeding.

Should there be any questions regarding this matter, kindly communicate directly with the undersigned.

Sincerely,



James A. Casey  
Counsel for United States Satellite  
Broadcasting Company, Inc.

JAC:dd  
Enclosures

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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of

Annual Assessment of the Status of )  
Competition in the Market for the ) CS Docket No. 95-61  
Delivery of Video Programming )

Directed to: The Commission

**REPLY COMMENTS OF UNITED STATES SATELLITE  
BROADCASTING COMPANY, INC.**

United States Satellite Broadcasting Company, Inc. ("USSB"), a DBS provider, by counsel, hereby files its Reply Comments in the above-captioned proceeding. These reply comments are directed to the Commission's request for information regarding the current status of competition from DBS systems and also replies to Comments of The National Rural Telecommunications Cooperative ("NRTC") that seek to resurrect its contention that the Federal Communications Commission (the "Commission") erred in its application of Section 628(c)(2)(C) of the Communications Act by not extending the regulations prohibiting exclusive program contracts in areas unserved by cable to contracts with multi-channel video providers which are not cable operators.<sup>1</sup> The NRTC's comments rehash an old argument which the Commission has already thoroughly considered and dismissed,<sup>2</sup> and no basis for revisiting this issue has been demonstrated.

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<sup>1</sup> See Petition for Reconsideration of NRTC, MM Docket No. 92-265, (June 10, 1993).

<sup>2</sup> See Memorandum Opinion and Order on Reconsideration of the First Report and Order, MM Docket No. 92-265, 10 FCC Rcd 3105 (December 23, 1995)(*hereinafter* "Order on Reconsideration").

**I. Response to Specific Requests for Information**

In response to the Commission's questions on pages 21-22 of its NOI, USSB submits the following:

- Q.(a) To what extent do the subscribership of these DBS services overlap? What is the total estimated subscriber base for each individual service provider and for the industry as a whole?
- Q.(b) What is the projected subscribership of each DBS service and of the industry as a whole at the end of 1995? At the end of each subsequent year through the end of 1999? On what are these projections based?
- A. The USSB and DirecTv services are receivable on the same DSS™ system, and as stated by DirecTv, owners normally subscribe to both services. Thus, USSB is in general agreement with DirecTv's responses to these questions. However, USSB does not have any information on C-band services.
- Q.(c) Where are most DBS subscribers located (i.e., urban versus rural areas)? How many subscribers are located in areas served by cable operators? What factors account for cable subscribers' choice to receive DBS services? What percentage of DBS subscribers also subscribe to cable services, and what cable services do they receive?
- A. USSB agrees with DirecTv that approximately fifty (50%) percent of subscribers are in areas passed by cable. In January, 1995, USSB subscribers informed USSB on how they receive local television station signals: seventy six (76%) percent reported that they use some type of antenna, twelve (12%) percent use cable and twelve (12%) percent did not know.
- Q.(d) What is the total estimated channel capacity of each operator? What are the plans of each operator to increase the digital compression ratio from the initial ratio used at the time of launch (so as to offer more channels at a later date)?
- A. The DBS-1 satellite is owned by USSB (5/16), and DirecTv (11/16), and, pursuant to an agreement, USSB pays a fee to DirecTv for the TT&C services related to USSB's transponders. The DBS-2 satellite is owned and operated by DirecTv. USSB agrees with DirecTv on the methods by which channel capacity could be increased i.e. increased power and/or changes in the compression ratio.
- Q.(e) How does each operator market its services? Are current marketing efforts targeted equally to potential subscribers in areas served by cable systems and potential subscribers in areas unserved by cable systems?

- A. USSB has three channels of distribution: (1) national, regional, independent consumer electronic retail stores (2); satellite TVRO retailers; and (3) a limited and growing number of NRTC franchisees. All three distribution channels serve both cable and non-cabled areas.
- Q.(f) Has the inability to offer local broadcast channels affected the competitive impact of DBS service? Have there been any developments that would permit DBS dish owners to use their systems to receive local broadcast channels?
- A. The DSS™ equipment which receives both USSB and DirecTv services has a hand-held remote unit which has been designed to permit ease of switching to cable or an antenna to receive local signals. Statistics on how USSB subscribers reported they receive local signals have been provided in response to (c) above.
- Q.(g) Are the prices for DBS services nationally uniform, or do they vary depending on the location of the subscriber? If they vary, what are the reasons for the price differentials?
- A. USSB's prices are uniform for all subscribers nationwide including areas served by NRTC and its affiliates.
- Q.(h) What is the availability of equipment for those who wish to subscribe to this service? If there is an equipment shortage, when is it projected to be eliminated? What is the basis for this projection?
- A. USSB agrees with DirecTv's response that, after equipment shortages in 1994, there is now sufficient production to meet consumer demand.
- Q.(i) How are equipment prices projected to change over one year? Over three years? What is the basis for this projection? Do installation and equipment charges limit the extent to which DBS services serve as reasonable substitutes for cable services?
- A. USSB agrees with DirecTv's response, and as pointed out by DirecTv, hardware retail prices are outside the control of USSB and DirecTv.
- Q.(j) What developments have there been concerning licensing and distribution arrangements for DBS equipment (such as plans for Sony to begin production and for other manufacturers to be licensed)?
- A. Under the Agreement between USSB and DirecTv, DirecTv is responsible for matters relating to the arrangements for the DBS equipment.

## **II. NRTC Has Failed to Raise Any New Issues With Respect To Exclusive Programming Arrangements**

NRTC contends that the Commission misinterpreted the language and intent of the Cable Act of 1992. It revisits its argument that the “Program Access provisions of the 1992 Cable Act were designed to create a level playing field for all MVPDs,”<sup>3</sup> and that by failing to prohibit exclusive arrangements between vertically-integrated cable programmers and non-cable operators, the Commission left in place a serious impediment to competition to cable by DBS.<sup>4</sup> The record, however, does not support NRTC’s assertion. In the Order on Reconsideration, the Commission correctly recognized that the purpose of the Program Access provisions was to prevent monopolistic abuses by cable operators, not to micro-manage the competition between the non-cable video services.<sup>5</sup> It noted that

The legislative history of Section 628 specifically, and of the 1992 cable Act in general, reveals that Congress was concerned with market power abuses exercised by cable operators and their affiliated programming suppliers that would deny programming to non-cable technologies, and did not address any such abuses exercised by non-cable technologies, such as DBS.<sup>6</sup>

NRTC has offered no new evidence to rebut the Commission’s correct interpretation of the Act, but simply restates its belief that the Commission is wrong. There is no reason to repeat the statutory interpretation exercise already conducted by the Commission.

NRTC’s comments suffer from a similar lack of evidence on the issue of competitive

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<sup>3</sup> Comments of the National Rural Telecommunications Cooperative, June 30, 1995, at 9-9 (*hereinafter* “NRTC Comments”).

<sup>4</sup> Id.

<sup>5</sup> See Order on Reconsideration at ¶35.

<sup>6</sup> Id.

harm. In the Order on Reconsideration, the Commission found that there was no evidence to show that non-cable exclusive contracts of the type complained of were harmful to competition, unfair, or deceptive.<sup>7</sup> NRTC's comments in this proceeding offer no evidence of harm beyond a conclusory statement which is hardly sufficient evidence to justify expansion of the exclusivity rule in the face of clear contrary congressional intent.<sup>8</sup>

The reality, of course, is that exclusivity promotes the development of non-cable technologies by enabling those providers to establish distinctive competing services, leading to less duplication of programming and broader diversity for the consumer.<sup>9</sup> Indeed, if the exclusivity prohibition were to be expanded as NRTC suggests, USSB would be seriously impeded in competing with DirecTv and NRTC due to having a significantly fewer number of channels. As DirecTv notes in its Comments, virtually all of its subscribers are also USSB subscribers.<sup>10</sup> Such would not be the case if DirecTv carried the same programming as USSB. It is the exclusive programming which USSB has managed to acquire which has made USSB a

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<sup>7</sup> Id. at ¶39.

<sup>8</sup> NRTC Comments at 10.

<sup>9</sup> Id. The Commission has recognized that

exclusivity is a normal competitive tool, useful and appropriate for all sections of the industry, including cable as well as broadcasting. Exclusivity enhances the ability of the market to meet consumer demands in the most efficient way . . . .

Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 5299, 5310 (1988), aff'd sub nom., United Video, Inc. v. FCC, 890 F.2d 1173 (D.C. Cir. 1989).

<sup>10</sup> Comments of DirecTv, Inc., June 30, 1995. at 5.

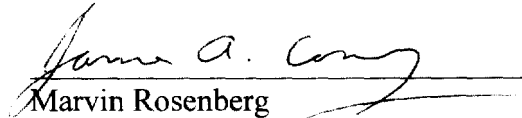
competitive service. Without that exclusivity, DirecTv and NRTC could become the only major DBS providers defeating the purpose of the Program Access provisions.

**Conclusion**

In the final analysis, NRTC's complaint is not that consumers are unable to obtain desired programming due to exclusive arrangements, it is simply that consumers are unable to obtain that programming from NRTC. The only interests served by NRTC's proposition is its own. Competition to cable is not enhanced, nor is the public interest served. The Commission's interpretation of Section 628(c)(2)(C) of the Communications Act reflects both the legislative history and FCC policy. The exclusivity provisions should not be modified.

Respectfully Submitted,

United States Satellite Broadcasting Company, Inc.

  
Marvin Rosenberg  
James A. Casey

Its Attorneys

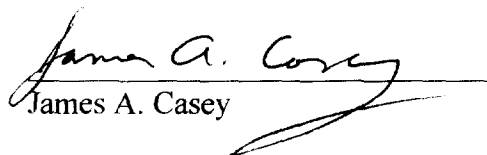
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Date: July 28, 1995

**CERTIFICATE OF SERVICE**

I, James A. Casey, an attorney with the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Reply Comments of United Satellite Broadcasting Company, Inc." were sent this 28th day of July, 1995, by first-class United States mail, postage prepaid, to the following:

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